IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

Ins.APP.No. 55 of 2004()

(IC.9/2000 of E.I.COURT, KOLLAM)

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APPELLANT(APPLICANT IN THE INSURANCE CASE):

SRI.G.KESAVAN NADAR, COUNTER CLERK O.D.,
KAIRRALI/SREE THEATRES, THAMPANOOR, TRIVANDRUM.

BY ADV. SRI.ANIL NARAYNAN
SRI.S.D.ASOKAN
SRI.R.SREERAJ
SRI.NIDHI BALACHANDRAN
SRI.ANIL R. NAIR

RESPONDENTS: OPPOSITE PARTIES IN THE INSURNCE CASE:

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1. THE REGIONAL DIRECTOR, ESI CORPORATION,
TRICHUR.

2. THE MANAGING DIRECTOR, KERALA STATE
FILM DEVELOPMENT CORPORATION LTD.,
CHALACHITRA KALABHAVAN, VAZHUTHACADU, TRIVANDRUM.

R1 BY ADV. SRI.P.SANKARANKUTTY NAIR

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 09/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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INAP.No. 55 OF 2004-A

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Dated this the 9th day of November, 2006.

JUDGMENT

This appeal is by a workman, who applied to the ESI Corporation and then to the Court for payment of full disablement benefit on account of an accident that allegedly took place on 3-7-1999 while the applicant was stated to be on duty.

2. The workman employed with the Kerala State Film Development Corporation Ltd., a private sector undertaking in one of its theatres at a place Vazhuthacaud in Thiruvananthapuram alleged that the manager of the theatre deputed him to go over to the Printing Press in Vilappilsala where certain materials (tickets) were being printed for the purpose of the theatre. According to the applicant, he went to a place called Thamalam from Vilappilsala to meet the manager who was by then there and returned to Vazhuthacaud via. Jagathi and met with an accident by the collision of his scooter and a motor car.

It is pointed out that the place Jagathi is between Vilappilsala and Vazhuthacaud, as also, between Thamalam and Vazhuthacaud. He was promptly admitted in the Medical College Hospital on that day where he appears to have been there till 7-9-1999. Ext.A10 is a statement recorded by the police on 4-7-1999.

3. The second opposite party-the employer filed pleadings admitting that the applicant was travelling in the course of his employment and under lawful authorisation and due directions of the higher authority, viz., the manager. It stands by the plaintiff that he is entitled to an order in his favour. The first opposite party ESI Corporation, however, contended that APW1 had conducted a site inspection of the Office of the second opposite party and found that there are sufficient number of tickets available on 3-7-1999 and that, therefore, there had been no need for the applicant to be rushed off to the printing press. It was also noticed in Ext.B2 that the next slot of tickets came from the press to the theatre only on 29-7-1999. APW1 gave evidence in support of his report Ext.B2.

4. The Employees' Insurance Court took the view that

the evidence of APW1 corroborating Ext.B2 has not been contradicted by providing any counter evidence through the second opposite party, the management and that the second opposite party had not produced relevant registers which could have disclosed its version that there was animosity between the Assistant Manager and the applicant which led to manipulation of certain documents against the interest of the applicant. Taking such a view, the EI Court repelled the contentions of the applicant.

5. Having regard to the statutory prescriptions that may be available in filing the application under the Act on his establishing the factum of an accident, the employee-employer relationship, the membership and prima facie material that the accident occurred in the course of his employment, it would be inappropriate within the frame work of the statute to reject the claim of the applicant merely because the management had not produced any further evidence. It could not have been treated as a failure of the applicant to bring in any evidence from the side of the second opposite party, the management because, the second opposite party had filed pleadings supporting his contentions. Under such circumstances, having regard to the social welfare object behind the statute, the EI Court

ought to have directed the management to produce materials in support of its plea. The trial and a decision by the court having been without adopting such a procedure to reach at the entire materials and do complete justice between the parties, I am of the considered view that the impugned order is vitiated on a substantial question of law and requires to be set aside under Section 82 of the Act.

In the result, the impugned order is set aside and the case is remitted to the EI Court. The second respondent Corporation is directed to place evidence before the EI Court including such registers and other materials which are in its custody that would be relevant for the decision of the case. This order will not preclude the applicant from taking such course as may be required to obtain further documents before the EI Court. The parties will appear before the EI Court on 12th of December, 2006. Transmit the L.C.Rs. forthwith.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-